

COMMISSIONERS APPROVAL

ROKOSCH

GRANDSTAFF

THOMPSON

CHILCOTT

DRISCOLL

PLETTENBERG (Clerk & Recorder)

Date.....August 10, 2007

Members Present.....Commissioner Jim Rokosch,
Commissioner Carlotta Grandstaff, Commissioner Alan Thompson Commissioner Greg
Chilcott and Commissioner Kathleen Driscoll

Minutes: Glenda Wiles

The Board met to discuss and make a decision on filing a petition in District Court against the Board of Adjustments for their recent decision on a variance granted for the Brooks Hotel. It was noted the Commissioners received the transcript from the Board of Adjustments and the Chairman wanted this issue placed back on the agenda for further discussion and decision. Present were numerous citizens, as well as the Brooks Hotel Developer Russ Hunt, Attorney Jennifer Lint who represents Russ and Civil Counsel Alex Beal.

Commissioner Rokosch requested the attention be focused on the issue at hand. He then chastised himself for saying 'they would sue one of their Boards'. He stated that is not the case; rather what is under consideration is filing a petition to appeal the decision that was made. This is not a lawsuit, simply a petition to appeal a decision that was made. Commissioner Rokosch also stated if the Commissioners decide this decision needs to be reviewed, filing a petition in District Court is the only avenue the Commissioners have. He noted some people raise the question as to why the Commissioners are hearing this matter and have placed it back on the agenda again. In consultation with Civil Attorney, the final date that any petition could be completed for submittal is August 15th. In regard to why the matter is being considered, he believes the Commissioners must be responsible for conduct and decisions made by the Boards they appoint. Two volunteer Boards have decision making authority, the Board of Adjustments and Board of Health and they are different and separate from other boards. Decisions must be made on credible evidence. Thus the responsibility to consider this matter stems from the transcript provided. It is important to decide if the decision was based on credible findings of fact. He stated he attended this meeting and felt the Board of Adjustments did

not apply the criteria and did not establish credible findings of fact. Secondly, they need to review this due to the voter initiative that created the interim zoning regulations. The Commissioners have a responsibility to the citizens. The Commissioners also need to review this variance request to see if it represents a unique hardship and whether this particular request would be any different than other proposed development in other locations in the county. Commissioner Rokosch felt that was the key to the issue. The interim zoning was established to move forward with comprehensive zoning in Ravalli County. The question is why is this subdivision unique? The zoning process is in place and is being conducted allowing the county and communities to have discussion and decision on appropriate zoning. So why is this subdivision not being held to that process?

Commissioner Chilcott asked for the last motion. Glenda read the motion of August 2nd. Commissioner Chilcott asked why they were even here because to revisit the issue again is unprecedented. Commissioner Rokosch stated what was voted on, was to not do something at that time and date. The Board can certainly reconsider this August 2nd motion. Commissioner Chilcott asked if there is a motion on the floor to reconsider the decision of August 2nd.

Commissioner Grandstaff stated she will make that motion. Commissioner Chilcott stated Commissioner Grandstaff was not in the 'affirmative' (vote on August 2nd) so she can not make that motion. Alex stated under standard Robert Rules of Order that is correct, and noted one of the three who voted in the affirmative must make a motion in order to reconsider this.

Commissioner Driscoll stated she will make a motion for discussion purposes in order to take action. Commissioner Chilcott then made a motion to reconsider the action. Commissioner Driscoll stated the motion should be to reconsider the motion for further discussion. Commissioner Grandstaff seconded (Commissioner Chilcott's) the motion. Discussion of motion to reconsider: no discussion. Commissioner Rokosch, Commissioner Grandstaff and Commissioner Driscoll voted "aye". Commissioner Thompson and Commissioner Chilcott voted "nay". Motion carried for further discussion.

Commissioner Rokosch asked for a motion to take a petition to District Court or open public comment. **Commissioner Grandstaff made a motion to open public comment. Commissioner Driscoll seconded the motion. No vote was taken.**

Public comment was then called for:

Stewart Brandborg stated he is a long advocate of comprehensive planning, and a 4th generation Bitterrooter. He has a great feeling for the people and resources, and speaks for a group of people known as the Bitterrooters for Planning. This is a broad group of people who have concerns over what is happening to the Bitterroot. The people who voted for zoning in November have been following this issue. He has never seen an issue that has unified people as has the growth issue. Unplanned growth has made people

heartsick. The opponents' campaign against the voters' initiative was misleading and the opponents spent quite a bit of money. They spread fear and it was detrimental to his group's cause. Stewart then spoke of the corporate world which takes advantage of the legislature; they have manipulated corporate influence by allowing uncontrolled mining and stripping of the timber. He stated the county and the residents now face large developments with no regard for water, air and wildlife.

Commissioner Rokosch asked Stewart to narrow his comments to the issue. Stewart stated he is narrowing his comments but felt these are salient factors in the issues today. There is a people's movement going on that needs to be addressed.

Stewart addressed Dr. Larry Swanson's report in regard to the economic basis of the county which is the wilderness, rivers and the fine farm fields. In the absence of good planning, we will lose the livelihood that draws people that want to live here.

Commissioner Chilcott stated he appreciates this passion, but they are here to address filing a petition against the Board of Adjustments and this discussion should be focused on the petition.

Stewart stated these are salient facts. Previous campaigners addressed planning, and the Commissioners are here because the people think you can lead. In regard to zoning, we need to come together for the builders and the farmers. Zoning should be done on the basis of facts so the builders and farmers can make a living. 7,000 people voted for the initiative, while others were misled by the campaign against it. Those 7,000 people will support the Commissioners. This approved variance opens the floodgates for other developers. He asked if the Commissioners read the transcript (of the Board of Adjustment meeting). He asked if the findings of fact were ignored; and did the Board act in an egregious, irresponsible and capricious manner. He felt they did act irresponsibly and many others feel that way too. He asked if this action is giving the Board of Adjustments and some people a license to destroy the initiative. He felt an uncontested Board of Adjustments ruling overrides any further consideration by the Commissioners. If the Commissioners have any reasonable doubt of their decision, an appeal to the court is perfectly in order and warranted. Stewart felt it is the responsibility of the Commissioners to do this. If the Commissioners could appear in defense of the Board of Adjustments decision, what justification do they have except the transcript? It tells the story. It gives power to the developers who want to circumvent the law. The issue is not the developer; it is the open door case that gives a flood of requests. If the Commissioners do not address this now, what will occur in the future. The people are pushing, asking for decisions in moving forward on planning. People provide democracy through lobbying. He stated his group represents no profit, they simply represent the citizens.

Rick Fuhrman stated the interim zoning is a 'blunt instrument' making it difficult to proceed with development. It was put in place because all other instruments were ineffective. Properly enforced, it leads impetus so development can occur at a proper place. The Board of Adjustment did not do a credible job of executing its

responsibilities. This is not a training issue. Rick also stated as per the Board of Adjustment Resolution to create; all sitting members should be dismissed. He supports the petition in district court.

Attorney Jennifer Lint represents Russ. She stated the Commissioners do not need political advice, but they do need legal advice. She advised the Commissioners to make sure it is a case that should be brought to District Court, in light of whether they can win the case or not. She reiterated her comments from the last meeting, that when these types of cases are taken to court, the Commissioners will lose control. If the Commissioners are challenging the results; is it a case to be brought. She encouraged the Commissioners to think about the conflict they will set up if they take it to District Court, and then seven months later they do the same thing. She asked if they thought they could win this in District Court. The District Court will review this in regard to case law, for a quasi judicial board; and in her legal opinion the Commissioners will not have a reasonable chance to win. In regard to the process – did the Board follow the statutes and resolution? If the Commissioners attack the process, they attack the resolution and they will lose control of the case. The notion of training the Board Members is a good thing to do. It's very important to remember the Board of Adjustment has no precedence within their zoning decisions and within District Court. Each case is reviewed on its own merits.

Curtis Cook stated “in the old days of telling me what they can and can't do; tell me how they can get around what they want to do”. He felt those days are over. The voters wanted countywide comprehensive zoning. The new Commissioners told the screening committee they were in favor of a change. He asked if they are going to stand up to the lion and represent the citizens by standing up for zoning. He stated the citizens who voted for the initiative are up against odds; he encouraged the Commissioners not to take the easy way out. The voters did not take the easy way out. The Board of Adjustments is obviously stacked in favor of the old regime. The law says the Requirements for Variance go to Planning and the Commissioners, then Board of Adjustments. The Planning Department found negative findings for four of the nine criteria. One negative finding was enough to deny the variance. The Board of Adjustment arbitrarily made their findings. Curtis then quoted the MCA in regard to the findings of fact. The Legislature said special exceptions can be made in regard to the zoning resolution, not other zoning resolutions. To tell the Board of Adjustments how they can get around it was not proper. The decision should be in harmony with our zoning. This is not a question if it is easy or hard, or if there is a hard decision on appeal. We need to give this our best shot, as we have the best side. Curtis stated County Attorney George Corn did not think the Commissioners should appeal, but George is not here. This is a vote to appeal the erroneous decision. Curtis also stated when a lawyer goes to court he deals with all the issues, if it goes to appeal, the District Court will consider the whole matter the Board of Adjustments considered. This is a request for an appeal, not to sue the Board of Adjustments. There is no other remedy of law.

Bob Scott supported Curtis and Stewart.

Shaen McElravey of Stevensville asked people to stand if they felt a petition should be filed. Most stood. He stated the most important thing is to remind everyone what Commissioner Rokosch said, not suing the Board of Adjustments, or hurting them, this is simply about clearing the mistakes off the charts, and it is like 'righting a wrong'. Listen to the people who are behind you. According to the MCA, it does say it is the intent and heart of the zoning initiatives, and allowing 17 condos on 3 acres does not fly with the interim zoning.

Commissioner Rokosch stated it was 13 condos for 3 acres.

Quinty Smith urged the Board to take this action. If the developer has to wait until zoning is in place, he needs to wait without setting a precedent.

Bill Knox stated he attended this Board of Adjustment meeting and the Chairman asked for findings of fact. There were no findings of fact. The zoning process should move forward during the interim period. The majority rules and the vote in November passed this new law. He asked the Commissioners to file a petition.

Gail Knox supports what Stewart stated. The Commissioners need to make a firm stand about 'fooling around' with the interim zoning laws. This is delaying the process of zoning. Builders need to know what they can and not do. She recommended the Commissioners move forward with petition.

Lyle Pilon stated he had the opportunity to listen to a recording of the Board of Adjustment meeting and it is clear to him the findings of fact they utilized to support their decision did not meet the '1 for 2' initiative. He felt they overstepped their boundaries and it needs to be corrected. The Commissioners need to remember the democratic process. If some developers see others have been granted special permission they too will seek it and we will be inundated by these requests. If they are future people of our community they will have the opportunity to go ahead with their project and not violate the peoples will. Remember the democratic process and think about what the voters have wanted. This is our last stop with Commissioners.

Barbara Kitchens stated she is disappointed they are having this meeting. There are many appointed boards and they have no staff support and they need thousands of dollars. One of the first actions that are occurring by the new Board of County Commissioners is to take the Board of Adjustments to District Court. She stated any special interest group can fill a room. She is concerned about the money the Commissioners are spending on this issue.

Commissioner Grandstaff stated their first action was to approve a 33 lot subdivision in Stevensville.

Public comment was now closed.

Commissioner Rokosch asked the other Board members if there was a motion to proceed with a filing of a petition in District Court.

Commissioner Grandstaff made a motion to file a petition in District Court. She stated in the last meeting of August 2nd, she was on the fence in regard to this issue. She had not read the transcript at that time, but now she has read the transcript and it seems the decision they came to was not made honestly. The criteria they discussed were the negative findings, and overturned them without findings of fact. When they got to the positive findings they did not discuss them, thus the whole debate was not honest.

Commissioner Rokosch seconded the motion. Commissioner Grandstaff stated on August 2nd she also thought it was to file a lawsuit which made her feel uncomfortable but it is to file a petition. She voted against Commissioner Chilcott's motion on August 2nd because it took her options away and she assumed they would be able to come back again for discussion which is what is occurring today. Commissioner Driscoll stated she read the transcript three times and she felt uncomfortable with the way they processed the subdivision. She felt they did not understand the findings of fact. She also noted the Board of Adjustment members were appointed by the old Commission prior to the new Board of five. She stated they must have liked these applicants, but she wonders what they were thinking when they picked these people to sit on the board.

Bill Hester (Board Member of the Board of Adjustment) said he thought this was a moratorium, which is not correct. This is supposed to be within the parameters of interim zoning. The prior Commissioners interviewed the applicants. Commissioner Chilcott stated they interviewed the candidates that applied. He is comfortable with the Board make up and their appointments were not political. Commissioner Driscoll stated she would take back her previous comments but noted when Bill Hester said he thought it was a moratorium, he was not within the harmony or the interim zoning. While she reviewed the transcript, it was not the way she would have found the findings of fact. Now a majority of people have put three new Commissioners in office and there is a clash. She agrees there will be some loss of control, and there might be some things that do not pan out. The issue is the Board of Adjustment because if this is the way they perceive the zoning, then we have a Board of Adjustments which is going to proceed with all the variance requests that will be the opposite of the interim zoning. This Board of Adjustment has a certain attitude and she stated she is concerned they did not find findings of fact or other items that would keep the interim zoning safe. She does not feel filing a petition is good. She agrees with Jennifer, she called several different attorneys and found the judge has a lot of latitude. She felt the problem is the Board of Adjustment does not have the proper harmony with the interim zoning initiative.

Alex stated whether this is a petition or a suit, it will read 'Ravalli County Commissioners versus Board of Adjustment'. He advised the Commissioners to look at their legal and moral obligations. The Board of County Commissioners has no legal obligation. The ethical obligations are for the Commissioners to determine. The Board of County Commissioners needs to look at the process. He stated this might not be the one they want to wade into. The Board of Adjustment decision has no precedent value at all; each one is taken on its own merit. The legal flood gates will not open. Thus the

potential consequences of this action will be the collateral issues. The standard of review is the same for all Board of County Commissioner decisions. The Planning Staff brings things in and the Commissioners do not follow them. The same issues of arbitrary and capricious are the same for the Board of Adjustment and the Commissioners. There is always a way to challenge anything. Alex stated the second issue is that Curtis is right, 'the attorney brings everything' but remember this petition might open hunting season. Others may want to challenge the '1 for 2' and the Commissioners do not want this to happen. Alex stated there is also a practical issue to consider. Betsy Brandborg works for the Ethics Counsel for the State Bar, and he worked with the Board of Adjustment, so he can not help the Commissioners. Thus he sees a conflict of interest. George is currently on vacation and that would leave Karen Mahar to file this petition. This decision would effectually shut down the County Attorney Office for felonies and misdemeanor cases. Commissioner Rokosch urged Alex to keep to the point. Alex stated this is pertinent information for the Commissioners to consider.

Phil Taylor stated this is not Alex's decision and his talk about who does what in the County Attorney's Office has no merit. Alex stated there is quite a bit of merit; the consequences of the Commissioners actions are important. He asked if there are other solutions. Curtis stated Alex is out of line. Alex asked the Board if he is out of line. Commissioner Driscoll stated she wants this information. Alex continued. He stated if there is an issue with the Board of Adjustment and the Commissioners do not solve it, they will have further problems. He stated the Commissioners could remove them for cause if they so desired. He suggested if they had a problem with the project, they should separate that issue out from the board membership.

Commissioner Rokosch agreed to separate the issues of the Board and project. What they are considering today is the decision the Board of Adjustments made and the avenue to appeal it. If they review the Board of Adjustments specifically, they will calendar that at a later time. Commissioner Rokosch stated from his perspective, the decision they made in granting the variance does not follow the interim zoning.

Commissioner Thompson stated he doubted there is any board that makes a decision that people do not agree with. He stated many times those decisions made are subjective decisions and they are difficult ones to make. He read the transcripts and found there was a lot of discussion and some mistakes were made by the board. He stated his decision today would not be different than tomorrow on this issue. He felt the Board of Adjustment made the best decision they could with the information they had. He noted the Commissioners do not always follow planning staff's recommendation. He felt it is disappointing that some people don't like the make up of certain boards. One person has asked for the petition, but then spoke in favor of the Board of Adjustment finding. This was a difficult decision on a difficult project. Many of the people who voted for the '1 for 2' zoning want residential density close to the infrastructure; and this decision to grant the variance is exactly what that does. He suggested they give this board a chance and move forward. He would like to see some more history of this board before he makes any changes.

Commissioner Driscoll pointed out to Mr. Hester the county does not have a moratorium on subdivisions as the Commissioners are currently considering over 4,000 lots. The interim zoning was not a moratorium; rather it was a way to curtail the growth until the county has a plan. The citizens worked hard to bring the initiative to the ballot. Bill Hester responded if he used the word moratorium, it was inappropriate.

Commissioner Chilcott stated he is an ardent supporter of comprehensive planning as long as it is done responsibly. He felt using a sledgehammer is not the best way for zoning. Rather, the Board of Adjustment was to do the 'finer' work on zoning through the variance process. The only two ways to obtain a variance is for lot size and geographic constraints for creek locations etc. He stated there have been some good points made here today. Stewart stated the Commissioners give a license to developers to circumvent the law. Legal Counsel states that is not the case. He likes what Shaen McElravy stated; "this project in the wrong place for the long term growth issues, but it is in the right place". Commissioner Chilcott asked if the criteria was there to support this variance. He is not sure it was, but if it was a mistake, it was in the right spot (geographical location) for that mistake. He felt this is an opportunity for the Board of Adjustment to spend some time with Civil Counsel in training. He noted most citizens want the higher density near the communities. Commissioner Chilcott further stated filing this petition in court will not enhance the zoning in Ravalli County. The interim zoning is a breath of air for planning as they are looking at actual planning now. Commissioner Chilcott stated he does necessarily like the interim zoning but it has worked out well. The findings of fact can be a pretty subtle legal process and it takes most of them some time to find those conclusions of law. This variance request is the first time 'out of the chute' for the Board of Adjustment. They considered public testimony and these are the subtleties of law when time, experience, and training are needed. He did not feel it was necessary to file a petition in District Court.

Commissioner Driscoll stated she is concerned about getting the control over this issue or at the next variance request they will be back again. She wants to address this now as it is her responsibility to make sure this type of decision does not happen again.

Commissioner Rokosch addressed Commissioner Chilcott's comments about the outcomes for judicial review as the Court might review the Board of Adjustment decision and possibly find credible findings of fact.

Commissioner Chilcott stated if he looked at his 'crystal ball' in regard to zoning; this location might be the proper place for that development.

Commissioner Rokosch stated "that is the nature of what interim zoning sets about". The main question is why this proposal should not be held to that process. There is testimony of whether the citizens might want this area as commercial or with less density. His 'crystal ball' may say they might want residential development or they may find they wanted commercial development at that location.

Commissioner Driscoll addressed Commissioner Chilcott and stated while she might like this type of development in that location, that is really not the point. The point is they need to follow the interim zoning intent.

Commissioner Chilcott stated they need to address where they draw a line in the sand when it comes to spending time and resources on this issue.

Commissioner Rokosch addressed the issue of hardship being unique to this property and the minimum deviation. He felt there is a significant question on the deviation. He stated Mr. Hunt addressed commercial lots adjacent to this, however there were potential deviations in the area. Commissioner Rokosch felt it is the responsibility of the proponent to address this and according to the transcript, Mr. Hunt stated this is a major deviation. He stated he can identify comments in the transcript that show this was a major deviation. He stated a minimum deviation could have been proposed. Commissioner Rokosch then addressed the hardship criteria that would preclude any development on any parcel, i.e., was it peculiar to the physical considerations. The only findings of fact were in regard to Mr. Hunt's irrigation and it is not unique to this parcel. Commissioner Rokosch stated that finding was not made. The transcript reads hardship that precludes the property to be developed; when it should be particular to the geography etc. The Board of Adjustment did discuss the management of the weeds but this is common to all of us in the county. There is still no weed management occurring on this property. In the preliminary plat conference Mr. Hunt had expectations of having a variance.

Mr. Hunt responded that he is not the one on trial here. Commissioner Rokosch made some comments about the preliminary plat meeting and the lack of findings of fact. He stated he is searching for anything that would constitute hardship or peculiar characteristic of this property or any other determination showing this to be a minimum deviation.

Commissioner Chilcott stated in regard to filing a petition in District Court he does not think this is the time or place to employ that kind of action

Commissioner Chilcott made a motion to table the motion on the floor indefinitely. The motion died for a lack of second.

In regard to Commissioner Grandstaff's original motion, Commissioner Grandstaff, Commissioner Rokosch voted "aye". Commissioner Driscoll, Commissioner Thompson and Commissioner Chilcott voted "nay". Motion did not carry and the matter is deemed closed.

In other business, the Commissioners made a site visit to the North Bear Creek Tracks Minor Subdivision during the afternoon hours.